

Letter of Findings Number: 04-20110280
Sales/Use Tax
For Tax Years 2008 and 2009

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ISSUE

I. Sales/Use Tax--Various Items.

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-2-1; IC § 6-2.5-3-2(a); IC § 6-2.5-3-4; Sales Tax Information Bulletin 60 (July 2006); Sales Tax Information Bulletin 28S (December 2009); Sales Tax Information Bulletin 28S (February 2008); Sales Tax Information Bulletin 28S (October 2007).

Taxpayer protests the imposition of use tax on various items.

STATEMENT OF FACTS

Taxpayer provides "maintenance and repairs for fleet management customers." The Indiana Department of Revenue ("Department") conducted a Sales and Use Tax audit for the years 2008 and 2009. As a result of that audit, Taxpayer was assessed tax.

Taxpayer filed a protest regarding the tax. An administrative telephone hearing was conducted and this Letter of Findings results. Further facts will be supplied as required below.

I. Sales/Use Tax--Various Items.

DISCUSSION

The Department initially notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Sales tax in Indiana is imposed by IC § 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Also, a complementary excise tax "known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). An exemption from the use tax is granted for transactions when sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4.

Taxpayer's protest involves the following items: (A) garage door repairs; (B) software subscription; (C) alarm system monitoring fee; and (D) various shop supplies.

(A) Garage Door Repairs

The Audit Report states, "Items purchased by the taxpayer for which the taxpayer could not provide evidence of sales tax paid at the point of purchase included... repair parts for garage doors...." As part of its protest, Taxpayer provided the Department with documentation from the door company that states that as of October 2004 the company would be using the "lump sum" billing method.

Regarding "lump sum contracts," Sales Tax Information Bulletin 60 (July 2006), 20060823 Ind. Reg. 045060287NRA states:

C. "Lump sum contract" is a contract in which all of the charges are quoted as a single price. A construction contractor may furnish a breakdown of the charges for labor, materials, and other items without changing the nature of the lump sum contract.

(Emphasis added).

And also:

LUMP SUM CONTRACTORS

If a construction contractor purchases construction materials pursuant to a lump sum contract, the construction contractor pays either: (1) sales tax at the time the construction materials are purchased, or (2) use tax at the time the construction materials are incorporated into real property if the contractor purchased or acquired the construction materials exempt from sales tax and the owner of the real property could not have purchased the materials exempt from sales tax.

Taxpayer's protest regarding this issue is sustained.

(B) Software Subscription

Next, Taxpayer argues that "sales tax was paid to [Company M] at the time of purchase...." Taxpayer provided invoices from Company M, which included invoices showing sales tax billed for months other than the five months assessed. For the five months that are at issue in the protest, those specific invoices show no sales tax billed (the audit report shows that the five months at issue were August 2009 through December 2009; those

invoices show that no sales tax was billed). Taxpayer's protest fails to meet its burden of proof under IC § 6-8.1-5-1(c) for this issue.

(C) Alarm System Monitoring Fee

Regarding the alarm system, Taxpayer states that it owns "the equipment and pay [the alarm company] for monitoring." Taxpayer provided the Department with an e-mail from the alarm company stating that Taxpayer is "not leasing the equipment...." However an invoice from the alarm company states in relevant part "LEASE/MONITOR." In light of this contradictory evidence, Taxpayer would need to provide the Department with a copy of the relevant contract with the alarm company in order to establish the terms of the transaction. Taxpayer has failed to meet its burden of proof under IC § 6-8.1-5-1(c).

(D) Shop Supplies

The audit report notes that Taxpayer was "collecting sales tax from their customers for materials which included items as parts cleaners, hand cleaners, degreasers, shop towels, and other items. The taxpayer has been notified that they are the end user of such items and should not be collecting sales tax on these items." The audit report also states:

The cost of the shop materials which the taxpayer sold to his customers, and for which the taxpayer collected and remitted sales tax in error to the Indiana Department of Revenue, will be included in the use tax assessment as additional taxable purchases for the 2008 and 2009 calendar years.

Taxpayer states that it "acted in good faith" and it was "wrongly advised that this was the industry standard procedure at several business seminars."

The Department notes that Sales Tax Information Bulletin 28S (December 2009), 20100127 Ind. Reg. 045100029NRA, states in relevant part:

IV. SHOP SUPPLIES CONSUMED BY A DEALER

Consumable supplies used by a dealer, such as masking paper and tape, oil dry, sandpaper, buffing pads, rags and cleaning supplies, to repair and service motor vehicles are not exempt purchases by the dealer. The dealer should pay sales tax on these types of purchases or remit use tax on the cost of these purchases on the dealer's sales tax returns. The purchaser (dealer) becomes the final consumer of such items because its customer does not become the owner of such consumable supplies. Although the dealer may charge the customer a fee for the dealer's consumption of these materials, such items are not being sold to the customer in a retail transaction and sales tax is not to be collected from the customer. (Emphasis added).

See also Sales Tax Information Bulletin 28S (February 2008), 20080130 Ind. Reg. 045080050NRA and Sales Tax Information Bulletin 28S (October 2007), 20071031 Ind. Reg. 045070718NRA.

Sales Tax Information Bulletin 28S makes it clear that Taxpayer, not its customers, is responsible for sales/use tax. Since Taxpayer did not pay sales tax at the time of the purchases, use tax is properly imposed.

FINDING

Taxpayer's protest regarding repair work for its garage doors is sustained; Taxpayer is denied regarding all other items protested.

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